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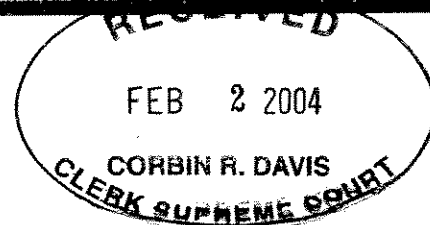
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January 30, 2003

Michigan Supreme Court Clerk  
P. O. Box 30052  
Lansing, MI 48909



Re: *ADM File No. 2003 - 60*  
*Proposed Amendment of Rule 5.125 of the Michigan Court Rules*

Ladies and Gentlemen:

The proposed amendment only begins to address the underlying problem with MCR 5.125 (C) which rule appears to be an attempt by the drafters to identify each “Interested Person” in a probate proceeding whose interests may be affected by the relief requested. It just does not do so always, as was recognized by the legislature when it attempted to define “Interested Persons” under the provisions of the Estates and Protected Individuals Code [MCL §700.1101, *et seq.*].

In Section 1105(c) of EPIC [MCL §700.1105(c)], the legislature defined “Interested Person” as follows:

“Interested person” or “person interested in an estate” includes, but is not limited to, an heir, devisee, child, spouse, creditor, and beneficiary and **any other person that has a property right in or claim against** a trust estate or the estate of a decedent, ward, or protected individual; a person that has priority for appointment as personal representative; and a fiduciary representing an interested person. Identification of interested persons **may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, a proceeding**, and by the supreme court rules. [Emphasis supplied.]

It appears that the insurance companies are sufficiently organized and concerned to make their point that if their interests may be affected by the outcome of a particular type of proceeding, then they are entitled to be identified as an “interested party” under the rule, and are entitled to notice.

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Page 2

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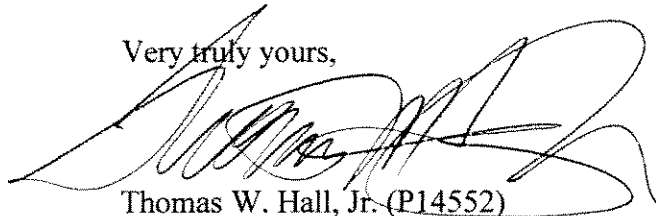
However, I just had a case in which my client, a joint tenant of certain real estate, whose other joint tenant was a ward under a conservatorship, was held not to be entitled to notice of a petition in the conservatorship proceedings to disjoin the ownership between my client and the ward in the land. In Isabella County Trial Court case no. 03-021,660-TV, the trial judge made that ruling because:

“under the MCR 5.125(C)(24) and (25), the Respondent is not a person specifically listed as an interested person. Therefore, there appears to be a conflict between MCL §700.1105 and MCR 5.125(C)(24) and (25) as to the definition of “interested person” in this case. \* \* \* The Supreme Court’s rulemaking power is constitutionally supreme in matters of practice and procedure and where a court rule governing practice or procedure and a statute conflict, the court rule controls. \* \* \* Therefore, since MCL §700.1105 and MCR 5.125 are in conflict as to what “interested parties” are entitled to notice, MCR 5.125 controls.”

However, the legislature realized that there would be certain constitutional due process requirements for notice in various types of proceedings under the fluid nature of the Court’s jurisdiction and involvement in estate and trust proceedings under EPIC, and the Michigan Supreme Court should be even more aware of the need to meet these due process requirements by assuring that those persons whose interests are affected by a particular proceeding, such as sale of real estate jointly owned, get notice of the proceeding. MCR 5.125 as currently written does not provide those assurances and is therefore, subject to attack.

It is my suggestion that in lieu of the proposed amendment, MCR 5.125(A) be amended to add a subparagraph (8) to include as an interested person, a person whose interests are affected by the relief requested in the specific proceedings, not just those in which insurance companies may be affected.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Thomas W. Hall, Jr.', is written over a horizontal line.

Thomas W. Hall, Jr. (P14552)